

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Sean Rodney Orth,

Plaintiff(s),

vs.

Phillip Duffy, *et al.*,

Defendant(s).

2:21-cv-01988-GMN-MDC

ORDER GRANTING MOTION

Pending before the Court is plaintiff's *Motion for Leave to File Third Amended Complaint* ("Motion") (ECF No. 104). For the reasons stated below, the Court GRANTS the Motion.

DISCUSSION

I. BACKGROUND

Plaintiff originally initiated this action *pro se* (see ECF No. 1); however, he later retained counsel (see ECF No. 88). The Court held a hearing regarding a stipulation for extension of time, in which the parties represented that there would be an amended pleading. See ECF Nos. 100, 102. At the hearing, the Court conferred with parties regarding the stipulation and the third amended complaint and ordered parties to either file a stipulation and third amended complaint, **or** a motion to amend the complaint. ECF No. 102. Before the Court is the Motion (ECF No. 104).

II. LEGAL STANDARD

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, once a party has amended its pleadings as a matter of course, subsequent amendments are only permitted "with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Rule 15 provides that "[t]he court should freely give leave when justice so requires." *Id.* Generally, the Ninth Circuit has held that Rule 15(a) should be "applied with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). "Five factors are taken into account to assess the propriety of a motion for leave to amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the

1 plaintiff has previously amended the complaint.” *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154
2 (9th Cir. 2014) (citing *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)); *see also Eminence*
3 *Capital, LLC*, 316 F.3d at 1052 (“undue delay, bad faith or dilatory motive on the part of the movant,
4 repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the
5 opposing party by virtue of allowance of the amendment, futility of amendment, etc.”) (citing *Foman v.*
6 *Davis*, 371 U.S. 178, 182 (1962). “In exercising this discretion, a court must be guided by the underlying
7 purpose of Rule 15—to facilitate decision on the merits, rather than on the pleadings or technicalities.”
8 *Roth v. Garcia Marquez*, 942 F.2d 617, 628 (9th Cir. 1991) (quoting *United States v. Webb*, 655 F.2d
9 977, 979 (9th Cir. 1981)). Ultimately, there is considerable deference to amendment and the analysis
10 “should be performed with all inferences in favor of granting the motion.” *Griggs v. Pace Am. Grp.,*
11 *Inc.*, 170 F.3d 877, 880 (9th Cir. 1999).

12 **III. ANALYSIS**

13 Plaintiff seeks leave of Court to file a Third Amended Complaint. ECF No. 104. Defendants Paul
14 Duffy, Paul Baldino, Brent Bowler, Ashley Mangan, and Alex Nelson filed a non-opposition. *See* ECF
15 No. 106. The remaining defendants did not file an opposition and the time to do so has passed. *See* LR
16 7-2(d) (“The failure of an opposing party to file points and authorities in response to any
17 motion...constitutes a consent to the granting of the motion.”).

18 The Court also finds good cause exists to grant plaintiff leave to amend. There is no apparent bad
19 faith or undue delay in the motion for leave to amend. The amendments do not appear to prejudice the
20 defendants. The amendments also do not appear to be futile. Although this will be plaintiff’s third
21 amended complaint, this factor does not weigh against granting leave to amend. As noted previously,
22 plaintiff imitated this action *pro se* and recently retained counsel. The Court finds that it would be in the
23 interest of judicial efficiency to give plaintiff leave to amend his pleadings with the assistance of
24 counsel.
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1 ACCORDINGLY,

2 **IT IS ORDERED that:**

- 3 1. The *Motion for Leave to File Third Amended Complaint* (ECF No. 104) is GRANTED.
- 4 2. Plaintiff must file the Third Amended Complaint within one week from the date of this
- 5 Order.
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8 DATED this 9th day of October 2024.

9 IT IS SO ORDERED.

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11 
Hon. Maximiliano D. Couvillier III
United States Magistrate Judge

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